The Parties

3. Plaintiff WRS has its place of business at 1000 Napor Boulevard, Pittsburgh, Pennsylvania 15205 and is engaged in the business of film duplication and fulfillment for various film and video distributors and the administration of the funds created by the distribution of said video and film.

5. Defendant Plaza is a corporation with its principal place of business at 304 North Edinburg Street, Los Angeles, California 90048 which was, at all relevant times hereto, engaged in the commercial exploitation of various film and video titles through licenses, assignment or other transfer of rights granted to it by the producers or other owners of the copyrights in the various film and video titles.

6. Defendant Parkinson is an individual residing at 5025 Gloria Avenue, Encino, California 91436 who was, at all times relevant hereto, a shareholder and Chief Executive Officer of Plaza.

7. Defendant von Bernuth is an individual residing at 11875 Padera Road, Camarillo, California 93012 who was, at all relevant times hereto, the Chief Operating Officer of Plaza.

8. Defendant Herklotz is an individual residing at 2322 "A" Via Ducita, Laguna Hills, California 92653 who was, at all relevant times hereto, the Chairman of the Board of Directors of Plaza.

Factual Background

9. In 1996, Parkinson formed Plaza to engage in the commercial exploitation of various film and video titles through licenses, assignment or other transfer of rights

EXHIBIT
tabbies
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7. The averments of paragraph 7 are not directed to this defendant, and no response is therefore required. If a response should be required, then said averments are denied.

8. The averments of paragraph 8 are admitted in part and denied in part. It is admitted that defendant Herklotz is an individual, and that he was Chairman of the Board of defendant Plaza from approximately September 1997 to April 1998. The remaining averments of paragraph 8 are denied.

9. The averments of paragraph 9 are admitted.

10. The averments of paragraph 10 are admitted.

11. The averments of paragraph 11 are admitted in part and denied in part. It is admitted that Parkinson at some time obtained rights to certain video and film titles. Defendant is without knowledge or information sufficient to form a belief as to the averments as to the number of video and film titles obtained. The same are therefore denied.

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 12. The same are therefore denied.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 13. The same are therefore denied.

14. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 14. The same are therefore denied.

15. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 15. The same are therefore denied.

16. The averments of paragraph 16 are admitted in part and denied in part. It is admitted that the Account Application contains the language quoted in paragraph 16. However, the averments

2. As shareholders, principals, and/or co-owners, each of them stood in a position of trust and confidence to the others.

3. At the request of, and with the knowledge of, defendants Parkinson and von Berneuth, and for the mutual benefit of the defendants, Herklotz signed the document attached to plaintiff's Complaint as Exhibit "B."

4. Despite their knowledge that the subsequent Services Agreement signed by defendants Parkinson and von Berneuth with plaintiff would substantially increase the sums allegedly owed by defendant Plaza to plaintiff, however, defendants Parkinson and von Berneuth did not inform Mr. Herklotz of the subsequent Services Agreement, and signed said Services Agreement without Mr. Herklotz' knowledge or consent.

5. Moreover, defendants Parkinson and von Berneuth used monies received by defendant Plaza from the sale of videos of "The Giant of Thunder Mountain" to pay off debts owed by Plaza to entities and/or individuals other than plaintiff, also increasing the alleged debt owed by defendant Plaza to plaintiff.

6. Defendants also mishandled the sales of "The Thunder of Giant Mountain" videos by failing to properly advertise and promote the sale of the video, and therefore additional funds which could have been used to pay the alleged debt of Plaza to plaintiff were not realized, decreasing the funds available to pay the alleged debt owed by defendant Plaza to plaintiff.

7. The actions and/or omissions of defendants Parkinson and von Berneuth, as set forth in paragraphs 4 and 5 constitute breaches of the fiduciary duty owed by defendants Parkinson and von Berneuth to defendant Herklotz.

8. As a direct and proximate result of defendants' breach of their fiduciary duties to defendant Herklotz, Mr. Herklotz has sustained substantial damage, including but not limited to the

claims by plaintiff for sums in excess of any debt which may have been contemplated by Mr. Herklotz at the time that he executed the document attached to the Complaint as Exhibit "B," as well as the attorneys' fees and costs incurred in the defense of this matter.

9. Defendants Parkinson and von Berneuth are therefore liable to defendant Herklotz for any amounts which he may be held liable to pay to plaintiff together with interest thereon at the legal rate, as well as the attorneys' fees and costs incurred by Mr. Herklotz in the defense of this action.

WHEREFORE, defendant John Herklotz demands judgment in his favor and against defendants Eric Parkinson and Charles von Berneuth, and against the plaintiff on his claims.

COUNT V

John Herklotz v. Eric Parkinson and Charles von Berneuth

Defendant John Herklotz sets forth the following Crossclaim against Eric Parkinson and Charles von Berneuth:

1. Defendant incorporates herein by reference the allegations of paragraphs 1 through 8 of Count IV of the Crossclaims as though set forth at length.

2. On or about May 5, 1998, defendant Eric Parkinson and/or Charles von Berneuth represented to defendant Herklotz that Wal*Mart had ordered a large number of "Giant of Thunder Mountain" videotapes for sale, and it was necessary for Mr. Herklotz to sign the document attached to plaintiff's Complaint as Exhibit "B" so that WRS could proceed to make the necessary copies of the video.

3. In fact, Wal*Mart had not placed a large order for "Giant of Thunder Mountain" videos, and time was not of the essence in making the additional videos.

4. At the time that these statements were made by defendants Parkinson and/or von Berneuth, these defendants knew that these statements were false. In the alternative, these statements were made with reckless disregard by defendants of their truth or falsity.

5. In addition, at the time that these statements were made, defendants intended that defendant Herklotz rely on these statements and to induce him to execute the document attached to plaintiff's Complaint as Exhibit "B."

6. Defendant Herklotz justifiably relied on the misrepresentations made by defendants Parkinson and/or von Berneuth in his agreement to sign the document attached to the Complaint as Exhibit "B."

7. As a result of the misrepresentations made by defendants Parkinson and von Berneuth, defendant Herklotz may be required to pay defendant Plaza's alleged debt to plaintiff, and has incurred attorneys' fees and costs incurred in the defense of this matter.

8. Should it be determined that defendant Herklotz is in any way obligated to plaintiff for the alleged debt of defendant Plaza to plaintiff, then defendants Parkinson and/or von Berneuth are liable to defendant Herklotz for any amounts for which he may be held responsible to pay to plaintiff together with interest thereon at the legal rate, as well as attorneys' fees and costs incurred in the defense of this matter.

WHEREFORE, defendant John Herklotz demands judgment in his favor and against defendants Eric Parkinson and Charles von Berneuth, and against the plaintiff on his claims.